



7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 830

[Docket No. NTSB-AS-2015-0001]

Interpretation of Notification Requirements to Exclude Model Aircraft

AGENCY: National Transportation Safety Board (NTSB or Board).

ACTION: Notice of interpretation.

SUMMARY: This document provides the NTSB's interpretation of the applicability of the agency's regulations concerning aircraft accident notification requirements to unmanned aircraft. The regulations define "unmanned aircraft accident" and require notifications of accidents that fulfill the criteria included in the definition. By this Notice, the NTSB clarifies it does not consider model aircraft to fall within the regulatory definition of unmanned aircraft accident, for purposes of required notification.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A copy of this Notice of interpretation is available for inspection and copying at NTSB Headquarters, 490 L'Enfant Plaza, SW, Washington, D.C. 20594-2003. Alternatively, a copy of

the Notice is available on the NTSB's Web site at www.nts.gov and at the government-wide Web site on regulations at www.regulations.gov, Docket No. NTSB-AS-2015-0001. A paper copy is available.

FOR FURTHER INFORMATION CONTACT: William English, NTSB Office of Aviation Safety, (202) 314-6686.

SUPPLEMENTARY INFORMATION:

NTSB Investigations of Unmanned Aircraft

On August 24, 2010, the NTSB published a Final Rule defining "unmanned aircraft accident" as:

[A]n occurrence associated with the operation of any public or civil unmanned aircraft system that takes place between the time that the system is activated with the purpose of flight and the time that the system is deactivated at the conclusion of its mission, in which: (1) Any person suffers death or serious injury; or (2) The aircraft has a maximum gross takeoff weight of 300 pounds or greater and sustains substantial damage.

75 FR 51953, 51955.¹

In the preamble to the Final Rule, the NTSB stated it sought to exclude model aircraft from the notification requirements of 49 CFR part 830. 75 FR at 51954. The NTSB's promulgation of the notification requirements with well-recognized definitions in part 830 was prompted by enactment of the Airport and Airway Safety and Capacity Expansion Act of

¹Existing NTSB regulations define "serious injury" and "substantial damage." 49 CFR 830.2.

1987, Pub. L. 100-223, 101 Stat. 1486 (Dec. 30, 1987). The statute specifically required the NTSB to promulgate notification requirements, stating the NTSB must "establish by regulation requirements binding on persons reporting ... accidents and aviation incidence subject to the Board's investigatory jurisdiction under this subsection." Id. sec. 311, 101 Stat. 1528.

The NTSB has consistently excluded unmanned aircraft systems (UAS) flown for hobby and recreational use from the definition of "accident" under 49 CFR part 830, and has historically not investigated the rare occasions in which a model aircraft has caused serious injury or fatality. For purposes of defining the term "model aircraft" in this publication, the NTSB has adopted the definition of the term that appears in section 336(c) of the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012, Pub. L. 112-95 ; 126 Stat. 77-78 (Feb. 14, 2012). Section 336(c) defines "model aircraft" to mean an unmanned aircraft that is:

- (1) capable of sustained flight in the atmosphere;
- (2) flown within visual line of sight of the person operating the aircraft; and
- (3) flown for hobby or recreational purposes.

The NTSB's exclusion of model aircraft from the applicability of 49 CFR part 830 is consistent with international practices and interpretations concerning accident notifications and

investigations. For example, Circular 328 from the International Civil Aviation Organization states model aircraft are outside the scope of applicability of the Chicago Convention.

International Civil Aviation Organization, Unmanned Aircraft Systems (UAS), Circular 328 (2011). The Circular states: "In the broadest sense, the introduction of UAS does not change any existing distinctions between model aircraft and aircraft. Model aircraft, generally recognized as intended for recreational purposes only, fall outside the provisions of the Chicago Convention, being exclusively the subject of relevant national regulations, if any." Id. at 3, ¶ 2.4. Furthermore, the International Society of Air Safety Investigators (ISASI) has set forth a similar policy statement. The organization recognizes "[f]ormal air safety investigations are not constituted to investigate model aircraft accidents, and Annex 13 is not applicable to them." ISASI Unmanned Aircraft System Handbook and Accident/Incident Investigation Guidelines at 24 (Jan. 2015).

Related Legislative and Regulatory Developments

On February 14, 2012, the President signed into law the FAA Modernization and Reform Act of 2012. Pub. L. 112-95. Among other provisions, the statute defines unmanned aircraft and small unmanned aircraft. The statute describes UAS as "an unmanned aircraft and associated elements (including

communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system." Id. at sec. 331(9). The statute defines "small unmanned aircraft" as a UAS weighing less than 55 pounds. Id. at sec. 331(6).

In addition, the statute provides a definition of "model aircraft." As quoted above, section 336(c) of the Act states the definition of a model aircraft is dependent upon the aircraft's use; an aircraft capable of sustained flight in the atmosphere that is flown within the operator's visual line of sight and only for hobby or recreational purposes is considered a "model aircraft."

Section 336(a) of the Act precludes the FAA from promulgating any rule concerning a model aircraft if the aircraft: (1) is flown "strictly for hobby or recreational use"; (2) is "operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization"; (3) is limited to not more than 55 pounds unless otherwise certified; (4) is "operated in a manner that does not interfere with and gives way to any manned aircraft"; and (5) when flown within 5 miles of an airport, the model aircraft's operator provides the airport operator and air traffic control tower with prior notice of its operation. Id. at sec. 336(a).

On June 25, 2014, the FAA published a Notice of interpretation with request for comment in the *Federal Register*. 79 FR 36172. The Notice stated the FAA had received inquiries concerning its enforcement authority over model aircraft, and states based on the language of the statute, aircraft that meet the statutory definition of "model aircraft" and operational requirements, as described above, are "exempt from future FAA rulemaking action specifically regarding model aircraft." Id. The FAA went on to clarify, however, "model aircraft that do not meet these statutory requirements are nonetheless unmanned aircraft, and as such, are subject to all existing FAA regulations, as well as future rulemaking action, and the FAA intends to apply its regulations to such unmanned aircraft." Id. at 36173. Following the Notice of interpretation, the FAA published a Notice of Proposed Rulemaking, in which it proposed a new regulatory part to regulate small UAS (14 CFR part 107). 80 FR 9544 (Feb. 23, 2015).

Conclusion

In light of recent regulatory and legislative actions and industry developments in the area of unmanned aircraft, the agency believes it is prudent to clarify our interpretation of the definitions codified at 49 CFR 830.2 and the notification requirements contained in § 830.5(a) (applicable to "aircraft

accidents" and "serious incidents").² In this regard, we remain consistent with our long-held practice of refraining from conducting investigations of any model aircraft accident or incident. We maintain this declination in our interpretation of our regulations within 49 C.F.R. part 830, and we do not feel compelled to alter this practice in light of recently proposed regulatory changes from the FAA or Congress's recent inclusion of a statutory definition of "model aircraft."

The NTSB does not now propose a definition of model aircraft, but will consider as instructive the description of "model aircraft" within section 336 of the FAA Modernization and Reform Act of 2012, as described above in the section of this Notice entitled "Related Legislative and Regulatory Developments".

The NTSB trusts operators will find this statement of interpretation helpful in understanding the NTSB's definition of "unmanned aircraft accident."

² We recognize the aviation community is mindful of the Board's decision in Administrator v. Pirker, NTSB Order No. EA-5730 (Nov. 18, 2014). In Pirker, the Board held the FAA could apply to UAS 14 CFR 91.13(a), which prohibits careless or reckless operation of aircraft. The respondent's flight that gave rise to the FAA's action in Pirker occurred prior to Congress's enactment of the FAA Modernization and Reform Act of 2012, which addresses UAS, small UAS, and model aircraft. The NTSB considers these statutory definitions instructive in interpreting its regulations.

Christopher A. Hart,
Chairman

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